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10/760,117	01/15/2004	DayNa M. Decker	62077-00008	7349
35965 7590 10/01/2008 DAVID HONG, LAW OFFICE OF DAVID HONG P.O. BOX 2111 SANTA CLARITA, CA 91386				
EXAMINER				
PRICE, CARL D				
ART UNIT		PAPER NUMBER		
3749				
MAIL DATE		DELIVERY MODE		
10/01/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/760,117

**Applicant(s)**

DECKER ET AL.

**Examiner**

Carl D. Price

**Art Unit**

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2008 (RCE).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 100-120 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 100-112 is/are allowed.
- 6) ☒ Claim(s) 113-120 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date 08/18/2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### Response to Arguments

Applicant's arguments with respect to claims **100-120** have been considered but are moot in view of the new ground(s) of rejection.

Original claims **1-99** were cancelled.

Applicant has amended the claims to be of a scope not previously considered. Consistent with applicant's argument that the prior art relied on in the previous office action fail to show, disclose and/or teach certain aspects of applicant's invention now recited in the claims filed on **08/18/2008** applicant has amended the claims to include at least the following:

#### **113. (presently amended)**

An apparatus comprising:

a container for containing a combustible liquid; the container having an open upper end; a sheet wick; a support structure connected to the container and adapted to hold the sheet wick upright in the container such that an upper end of the sheet wick extends above a top surface of the combustible liquid in the container; the container has a floor and the support structure is mounted to and extends up from the floor; the container includes an outwardly and perpendicularly extending ledge about a top perimeter of the container the ledge includes heat and fragrance releasing holes; and the heat and fragrance releasing holes are oriented substantially perpendicular to the open upper end of the container.

Regarding the rejection of claims **100** under 35 U.S.C. 102(b) as being anticipated by US **2324753 (Alexiade)**:

"Respectfully, Alexiade does not teach every element of the applicant's claim 100. First, as shown in Fig. 3 and 4 of Alexiade, Parts 12 and 13, appear to have the same surface area and not different surface areas as described in applicant's claim 100.

Second, Alexiade does not teach a second plate with a first and a second leg. Rather, looking at the structures part no. 13 of Alexiade (as designated by the Examiner), Part No. 13 does not have a first and a second leg; there only appears to be no leg structures coming off Part No. 13 of Alexiade as shown in Fig. 3-4."

The examiner agrees with the applicant's argument against the rejection of claims **100** under 35 U.S.C. 102(b) as being anticipated by US **2324753 (Alexiade)**. In this regard claims **100-112** contain allowable subject matter over the prior art of record.

In regard to the rejection of claim **113** under 35 U.S.C. 102(b) as being anticipated by US **147386 (GIBSON)**, applicant has amended claim 113 to include more specific language in an attempt to distinguish the claimed invention over the prior art reference of US 147386 (GIBSON). In this regard, claim 113 now specifies that the container includes an outwardly "and perpendicularly" extending ledge about a top perimeter of the container.

The prior art references of US **4926298 (Zimmerman)** and US **4557687 (Schirnecker)** are now relied on to address the scope of the claimed invention now presented in claims 113-120.

See the examiner's action appearing below.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims rejected under 35 U.S.C. 103(a)**

Claims **113-120** are rejected under 35 U.S.C. 103(a) as being unpatentable over US **4926298 (Zimmerman)** and US **4557687 (Schirnecker)**.

**US 4926298 (Zimmerman)** shows and discloses an apparatus comprising:

- a container for containing a combustible liquid (**US 4926298 (Zimmerman)** discloses that "The flame source may be a candle or one of several types of self-contained liquid or gas type refillable or disposable fuel cells presently in wide use.");
- the container having an open upper end;
- a wick;
- a support structure connected to the container and adapted to hold the wick upright in the container such that an upper end of the sheet wick extends above a top surface of the combustible liquid in the container;
- the container has a floor (not reference) and the support structure is mounted to and extends up from the floor;
- the container includes an outwardly and perpendicularly extending ledge (14) about a top perimeter of the container;
- the ledge includes holes (10; radially extending "slots") oriented substantially perpendicular to the open upper end of the container.

**U.S. Patent**

**May 15, 1990**

**4,926,298**

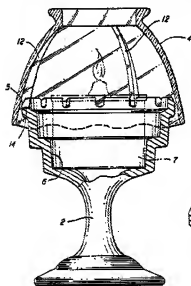


FIG. 1

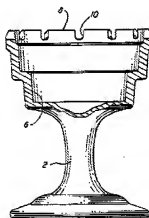
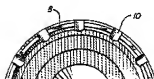


FIG. 2



**US 4926298 (Zimmerman)** discloses:

(5) As may be seen in FIG. 2, the upper annular surface 8 of pedestal 2 has a series of slots 10 cut therein. The slots are cut vertically into the annular surface or lip 8 of the pedestal and are oriented on radials of the circular cross-section of the lip. In the embodiment shown, the slots 10 are spaced about the annular surface 8 at 30 degree intervals making a total of twelve (12). (See FIG. 3)

(6) The dimensions of lugs 12 and slots 10 are chosen to provide a smooth slidable fit as the globe is installed on the pedestal and the lugs are engaged in the slots. The outer edge of annular surface 8 is chamfered at an angle of about 30 degrees. A globe with three lugs spaced 120 degrees apart can be engaged or dropped into the slots by rotation of no more than 30 degrees.

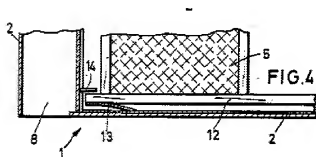
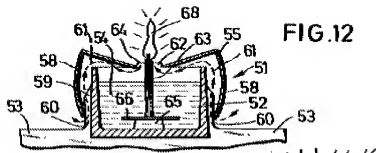
(7) The lugs 12 are placed on the inner surface of globe 4 so that when they are bottomed out in slots 10 the globe is spaced above the base pedestal 2 an appropriate distance to form annular space 5 allowing further ventilation for burning of the flame source in recess 6. This three point mounting also assists in providing a level or non-rocking mounting of globe 4 on pedestal 2.

**US 4926298 (Zimmerman)** shows and discloses the invention substantially as set forth in the claims with possible exception to:

- a sheet wick; and
- a support structure connected to the container and adapted to hold the wick upright in the container.

**US 4557687 (Schirnecker)** teaches, from applicant's same wick burner field of endeavor, that it is known to use form a burner with a flat wick (i.e. - sheet wick) wherein the lower end of the wick is supported in the container by structure (12, 13, 14) connected to the container, and wherein the wick is immersed in a fuel which may consist of solid combustibles, such as paraffin or liquid fuels such as oil.

**US 4557687 (Schirnecker)** shows:



US 4557687 (Schirnecker) discloses:

“(7) To attain this object, according to the invention a fuel element in the shape of a burning log is proposed, which has a shell-like, elongated housing to receive a replenishable supply of a fuel, such as for example granulated paraffin, while on the top side of said housing a flat combustion body, such as a flat wick, is arranged. The lower end of the wick is located in the housing and is immersed in the fuel supply contained therein, with the upper edge or end of the flat wick protruding to the extent that an open flame is present. The invention therefore proposes as the fuel element a type of combustion body having at least one wick, saturated with a fuel, that is contained in an indestructible housing. The fuel may consist of solid combustibles, such as paraffin or liquid fuels such as oil. The housing may have the configuration of a split log of wood and be provided with a surface simulating the bark of wood. It is made for example of a metal and is thus indestructible.”

“(5) Both the housing 2 and the cover 3 may be formed of sheet metal. The wicks 5 are resting with their lower end on a beam 12, supported in the lower area of the housing 2 with limited height adjustability. The beam 12 is supported at both of its ends on bimetallic springs 13, which normally pressure the corresponding ends of the beam upward against tongues 14 extending laterally into the housing 2. If, however, the fuel supply 7 in the housing 2 has attained a certain elevated temperature, i.e. when it has melted, the bimetallic springs 13 are deformed so that they no longer pressure the

beam 12 against the tongues 14 so that the beam 12 moves downwardly within the housing 2. Correspondingly, the upper burning edge 5a of each wick 5 is automatically lowered when a certain relatively lower temperature is reached, so that the flame 6 burns in a more stable manner and cannot flicker.

(6) Each wick 5 consists essentially, as seen in FIGS. 5 to 7, of a metal plate 15 and a hose 16 of a glass wool fabric or other inorganic material, which does not burn, the hose 16 being drawn over the plate 15. The thickness of the sheet metal 15 is a function of the thermal conductivity of the material so that on the one hand an adequate gasification temperature is always maintained at the burning edge 5a of the wicks 5, and on the other, the wick is conducting sufficient heat to the inside in order to rapidly melt the fuel supply 7. The plate 15 may further contain a plurality of orifices to control the thermal conductivity. If the plate 15 consists of iron, it has a thickness, for example, of 0.1 to 0.2 mm."

"(9) The fuel element according to the invention is equipped with one or several wicks in the manner of a constant burner. The wicks, and in particular their material and their thickness, are chosen so that with consideration of the thermal conductivity of the material used, an adequate gasification temperature is always maintained for the fuel at the burning edge of the wick. If the fuel is paraffin or the like, the wicks must further conduct sufficient heat into the housing of the fuel element in order to melt the paraffin in the area of the immersed wicks, so that sufficient amounts of molten paraffin will always be drawn up into the wick. Thermal conductivity may be obtained, for example, by means of a piece of sheet metal embedded in the wick, and said sheet metal may contain openings to control the thermal conductivity."

In regard to claims 113-120, for the purpose of providing a suitable alternative fuel and wick configuration, it would have been obvious to a person having ordinary skill in the art to modify the fuel and wick arrangement of US 4926298 (Zimmerman) to be in the form of a sheet wick having a support structure connected to the container and adapted to hold the wick upright in the container, in view of the teaching of US 4557687 (Schirnecker).

In regard to claim 113-120, the slots (10) of US 4926298 (Zimmerman) are deemed to be the structural and functional equivalent to applicant's holes since both applicant's holes and the slots (10) of US 4926298 (Zimmerman) radially extending recess areas formed in an upper peripheral ledge of a container wall. As such, the slots (10) of US 4926298 (Zimmerman) being formed and arranged in a manner not unlike that of applicant's holes would necessarily be



capable of acting as heat and fragrance releasing holes, at least in the manner only broadly recited in the claimed.

In regard to claims **114-120**, Official Notice is taken that it is well known to from lamp support structure, fuel containers, wicks from a wide variety of materials according to necessary design concerns and availability of materials, and with regard to wicks their known properties (e.g. – wicking ability, heat resistance, durability, etc.), such as solid mineral (e.g. – asbestos), stone, permeable, inorganic, organic wick, woven, fibrous, fiberglass, graphite, polyamide, or polyethylene, etc. Therefore, in view of that which is well known in the art of combustors, it would have been obvious to a person having ordinary skill in the art to **US 4926298 (Zimmerman)** support structure, fuel containers and wick materials of the type recited in applicant's claims.

**Allowable Subject Matter**

Claims 100-112 are allowed.

**Conclusion**

See the attached USPTO for, 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl D. Price whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven B. McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3749

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CARL D. PRICE/

Primary Examiner, Art Unit 3749